

REPORT

OF THE

TRIAL OF JOHN QUAY,

VS.

THE EAGLE FIRE COMPANY OF NEW-YORK;

BEFORE THE

HONOURABLE WILLIAM W. VAN NESS,

ONE OF THE JUSTICES OF THE SUPREME COURT OF JUDICATURE OF
THE STATE OF NEW-YORK,

AT THE CITY-HALL OF THE CITY OF NEW-YORK;

COMMENCING

ON FRIDAY THE SIXTH, AND ENDING ON TUESDAY THE
TENTH DAYS OF DECEMBER, 1816.

"Quem Deus vult perdere prius dementat."

God first with madness shakes that mind,
Which he to ruin hath consign'd.

BY DANIEL ROGERS,

COUNSELLOR AT LAW,

EDITOR OF THE "NEW-YORK CITY-HALL RECORDER."

NEW-YORK:

PRINTED BY J. SEYMOUR, NO. 49 JOHN-STREET.

.....
1817.

EVERY
CLASSICS
KE
223
Q39
R47
1817

Ex Libris

SEYMOUR DURST

ADVERTISEMENT.

The first volume of the "New-York City-Hall Recorder," was nearly completed at the time the trial occurred, of which the following is a Report. It was considered, that many would be anxious to read and preserve the Report in a separate state, who might wish to avoid the expense of that volume. For these reasons, the Editor determined to publish the Report separately; and for the convenience of aged people, in a fair, large type.

EVERY
DURST

PREFACE.

THE awful ravages of fire, occasioned by accidents, against which human prudence cannot guard, frequently destroy, in an hour, the fruit of honest enterprise and industry, acquired during a long laborious life. To secure against hazards of this nature, and, for a trifling consideration, to guarantee a reparation of losses sustained in good faith, is the business of insurance against fire.

In a flourishing populous country, the utility of institutions established for this purpose, must be felt and acknowledged; the general principles upon which they depend and are regulated, are simple.

A great number of individuals in the community, whose property is liable to loss by fire, severally advance a small proportion of their property to a company of men, incorporated for that purpose, who thereupon contract, that if any loss is sustained by the individual, in good faith, by fire, that they will make ample remuneration. Comparatively speaking, very few actually sustain loss. By this means, the loss of an honest individual is, in effect sustained by the many who have, voluntarily, advanced each a small sum, for the purpose, on their part, of preserving their own property. Thus, *self-love* is rendered subservient to the benign objects of *universal benevolence*.

The sum advanced for the insurance, which, in amount, is ever proportionate to the hazard to be in-

curred, is termed the *premium* ; the contract securing the individual against loss or damage by fire, is termed the *policy* ; and, on general principles, whenever any fraud on the part of the insured exists, the insurers are discharged from all responsibility on the policy.

The detection and exposure of fraud, in ordinary cases, is useful ; but when fraud, coupled with crime, is dragged from its dark and secret recesses to the glaring light of day, the example is highly solemn and interesting to the community.

The situation of the building described and referred to in the following report, was delightful ; and the prospect from it was grand and majestic. It stood on the margin of the ocean, about ten miles south from the northern extremity of Sandy-Hook, forty miles from New-York, and short of seventy from Philadelphia ; the nearest place from that city to the seashore.

The principal part of our coast is indented by spacious bays, or lined with extensive marshes, which serve as barriers against the inundations of the sea : but, from the Hook south, along the Jersey shore, for some distance, the ocean boldly approaches the shore. Here no alluvion is formed, as on other parts of the coast, but the ocean rather wears away the land. The temperate breezes from the sea contribute equally to destroy the influence of the chilling blasts of winter and allay the fervent heat of summer.

Strangers of delicate health, or those bent on an excursion for pleasure, resorted to this place in great numbers, from a great distance. Wandering on the extensive beach, in full view of the boundless prospect towards the rising sun, they felt the salutary influence of the

sea-breeze by day, and at night were lulled to repose by the distant sullen roar of the ocean. At seasons, too, the sea, bearing on its bosom the commerce of a great city, was calm, smooth, and unruffled, diffusing through the mind a placid serenity: and at other times might be surveyed afar, the rude conflict of contending waves—an elemental war amidst a wilderness of waters.

Such a situation, so retired, so beautiful, so sublime—devoted to the purposes of health, and friendship, and solitude, and contemplation, ought to have escaped the rude grasp of cupidity and avarice.

“Procul O! procul, esto profani.”

Alas! Not the sacred abodes of peace, nor the favourite retreats of genius, consecrated to the purpose of repose or devotion, are exempt from the invasion and withering influence of that detestable avarice, which, in its undeviating march in pursuit of its darling object, is restrained by no law, human or divine.

This building, in *such* a place, and devoted to *such* objects, was doomed a prey to the midnight incendiary. The torch was applied, and the horrid conflagration streamed to heaven. The noble edifice fell in one undistinguished mass of ruin. The cattle arose and fled affrighted to the most remote recesses of the grove. The distant mariner surveyed the flaming meteor from afar, which illuminated his way on the ocean, and the angry spirits of the deep, mournfully howled to the midnight blast.

Reader, in the following sheets you will discover how this direful conflagration was kindled. The motive which induced, the means which accomplished,

and the end which followed the sad catastrophe, are here unfolded for your instruction.

Attend, and learn by example, that in the wicked attempt to gain by fraud and crime, even the giant grasp of avarice may be unclenched, and lose *much*, which it might otherwise have retained.

New-York, Dec. 31st, 1816.

REPORT OF THE TRIAL, &c.

At the Sittings holden in and for the City and County of New-York, at the City-Hall of the said City, on Friday the sixth, Saturday the seventh, Monday the ninth, and Tuesday the tenth days of December, in the year of our Lord one thousand eight hundred and sixteen, before the Honourable William W. Van Ness, one of the Justices of the Supreme Court of Judicature of the State of New-York.

M'KESSON, Clerk.

INSURANCE—ACCOMPLICE—SLAVE—MANUMISSION.

JOHN QUAY,

vs.

THE EAGLE FIRE-COMPANY OF NEW-YORK.

GOLDEN, D. B. OGDEN, AND BRINKERHOFF, *Counsel for the Plaintiff.*
EMMET, BOYD, AND WELLS, *Counsel for the Defendants.*

In an action brought on a policy of insurance against loss or damage by fire, the plaintiff is not entitled to recover, should it appear that such fire was occasioned through the agency, or by the procurement of the plaintiff.

On the trial of such action, the defendants will be allowed to prove incumbrances by mortgages, on the property insured, previous to its insurance, either as an evidence of the real value, or of fraud.

It seems, however, that exemplifications or sworn copies of the registry of such mortgage taken from the office of the Clerk of a county in a foreign state, will not be received in evidence for the purpose of proving such incumbrances.

Q, the master of a slave in the state of New-Jersey, executed and gave to A, the slave, a written instrument, stating, that A was the servant of Q, and had the liberty of Q to work for himself A, in the said state, and to hire himself to any one willing to employ him, provided that A paid Q \$64 a year, for four years; stating further, that A had served Q faithfully five years as a slave. It was held that this instrument was a private contract between Q and A, independent of any statute law relating to slaves, and operated as a conditional manumission of A, who, on the payment or tender of the sum to be paid during the four years, at any time within the term, became from that time a free man.

THIS was an action on a policy of insurance executed by the defendants to the plaintiff, on the 5th day of April, 1815, by which the defendants had insured against loss or damage by fire, for one year, a certain dwelling-house, belonging to the plaintiff, formerly occupied by Joshua Bennet, on Long Branch, in the county of Monmouth, and State of New-Jersey. The house was destroyed by fire on the 15th day of May, 1815, and the suit was brought to recover the amount for which the property was insured, which amount was \$10,000.

To the declaration in the cause, the defendants pleaded the general issue, subjoined to which was a notice of special matter to be given in evidence on the trial, alleging, in substance, *that the building insured had been fraudulently burned by the procurement of the plaintiff.* This allegation formed the principal ground of defence on the trial.

The cause was opened by Brinckerhoff, and the following preliminary proofs on behalf of the plaintiff, according to the requisitions of the policy, were produced, and admitted by the opposite counsel :

1. A certificate, signed by William Brinley, Esquire, a justice of the peace, in and for the county of Monmouth, in the state of New-Jersey, bearing date May 23d, 1815, stating the belief of the justice of the fairness of the loss, and that, in his opinion, the plaintiff had thereby sustained damage to the amount of \$8000.

2. The depositions of Benjamin Wardell and George Poole, taken in Monmouth county, on the 22d day of May, 1815, before William Lloyd, a justice of the peace, ascribing the occasion of the fire to the act of some evil disposed person, and estimating the value of the building before it was destroyed at \$10,000.

3. A deposition of the plaintiff, taken in the city of New-York, on the 26th day of May, 1815, stating that he had actually sustained a loss, by reason of the destruction of the house, to the amount of \$10,000.

The counsel for the plaintiff then produced a deed for the premises destroyed, from Lewis Gordon, late Sheriff of Monmouth county, to the plaintiff, bearing date on the 10th day of March, 1815.

On the production of this deed, the counsel for the plaintiff offered to prove the hand-writing of the grantor and the subscribing witnesses to the deed, all residing in the state of New-Jersey.

This evidence was objected to by the counsel for the defendants, on the ground, that a notice had been previously given to the plaintiff's attorney, that one of the witnesses or the grantor would be required on the trial, to prove the deed. It was alleged, that the

reason of this cause was, that the deed had been ante-dated, and further, that this notice had been given in time, for the opposite counsel to procure the attendance of the witnesses.

It was admitted by Mr. Brinkerhoff, that the notice was so received, and that he communicated the same to the plaintiff; but the counsel, nevertheless, insisted on his right of proving the deed in the usual manner, which he was permitted to do by the judge.

The execution of the deed was proved by Lewis Abrahams, a witness on behalf of the plaintiff, who proved, that Elias Gordon, one of the subscribing witnesses, lived at Middletown Point, and that Lewis Gordon, the grantor, and Elias Conover, the other subscribing witness, lived in Monmouth county, in the state of New-Jersey.

The counsel for the defendants inquired of this witness, whether he had not heard Gordon, the grantor in this deed, say, that the deed was executed on the 18th of May, 1815.

This question was objected to by the opposite counsel, and decided to be improper.

This deed was then read, and it recited an execution on a judgment recovered against Joshua Bennet, in favour of Jacob Wyckoff and John Quay, on the 16th day of September, 1814, for \$8005 18, on covenant: Also, an execution on a judgment recovered at the same time with the other, in favour of Irens Davis against Bennet, for \$450 debt; and also, another execution on a judgment recovered on the 6th of October, 1814, by John Hamilton against Bennet for \$2162 debt.

The deed further recited the seizure of the premises under the executions aforesaid, and the sale thereof to John Quay, the plaintiff in this suit, on the 7th day of March, 1815, for the sum of \$1005, *subject to all incumbrances*. The acknowledgment and recording of the deed took place on the 3d day of June, 1815.

The depositions of David Craig, Jacob Corlius, and Alexander McGregor, witnesses on behalf of the plain-

tiff, examined under a commission issued by the plaintiff into the state of New-Jersey, were then produced and read. From these depositions it appeared, that the plaintiff had been a justice of the peace, and is now a judge of the Court of Common Pleas, of Monmouth county, aforesaid, and that his character for truth, honesty, and probity was unexceptionable. Craig had known him for thirty years, and the others for shorter periods of time.

These witnesses estimated the value of the buildings destroyed, at \$10,000; but neither of them knew of any incumbrances on the property, and *knew not that it was insured before its loss.*

From the examination of these witnesses, on the cross-interrogatories on behalf of the defendants, it appeared, that the plaintiff, to go from his house to that of William Brinley, the justice who had signed the certificate aforesaid, must pass by the house of John Williams, another justice of the peace in that vicinity*.

Boyd, on behalf of the defendants, opened the defence

He stated, that the principal defence on which the defendants relied for a verdict, was, that the buildings had been destroyed by the procurement of the plaintiff; that the plaintiff was not now surprised at this defence, because he had been notified thereof from the time the plea in the cause was filed. The counsel observed, that there were other minor points, which he would notice, and each of which would, probably, form a substantial ground of defence; but that he should first state the grounds, on which the principal defence would rest.

He observed, that defences of this sort, must for the most part be made out from circumstances: that the circumstances in this case were very strong.

* The policy requires the certificate of a magistrate, notary public, or clergyman, not concerned in the loss, *most contiguous* to the spot, where the fire happened, stating his acquaintance with the character and circumstances of the insured; his belief that the loss was without fraud, &c.; and his opinion of the amount of the damages sustained.

As to the circumstantial proof.

1. The motive of the plaintiff—INTEREST. He claims 10,000 dollars, and did not lose more than 1005 dollars, at the very utmost.
2. His great anxiety to get the family of Bennet out of the house, without motive—unless to burn it.
3. His FALSEHOOD, in relation to the subject matter of the insurance and loss, in a variety of particulars.
4. His suborning two men to commit perjury, in relation to the black man, who burnt the building.
5. His oath, as to the amount of his loss.

The counsel observed, that he thought from the circumstances alone, the jury would feel themselves compelled to give a verdict for the defendants; but he would produce before them the man who burnt the buildings, by the procurement of the plaintiff, and whose testimony would not leave a doubt on their minds, of the plaintiff's guilt.

The other grounds of defence, to which he had alluded, were,

1. The FALSITY of the plaintiff's oath, as to the amount of his loss; which, by the policy, forfeits all claim to payment.
2. The circumstance of the nearest justice, by the only road which led to the house of the justice from whom the plaintiff got a certificate, having refused to give one.

A letter from the plaintiff, directed to Henry I. Wyckoff, Esq. President of the Eagle Insurance Company, bearing date, April 5th, 1815, was then read in evidence.

This letter is in the words and figures following:

"Sir...I wish you to insure the buildings of which the above is a sketch, drawn by me from recollection. They are situated at Long-Branch, in the county of Monmouth, township of Shrewsbury, state of New-Jersey, and were lately the property of Joshua Bennet, and were occupied by him as a lodging-house.

"Besides the original building, the proprietor is informed the two wings which were erected three years ago,

cost \$ 15,000. I wish, however, that the insurance on the whole may amount to \$ 10,000. They were purchased by me under my judgment about three weeks ago. I am, respectfully, your obedient servant,

JOHN QUAY."

Above this letter, on the same half sheet, there is a diagram or description of the premises, from which it appears, that the building was situated on the sea-shore, and consisted of an original building in the figure of an oblong square facing the shore easterly, the longest sides of which ran nearly at right angles from the shore. From the rear of this building, two wings, about seventy feet in length, and thirty in breadth, extended. The south wing in such manner as to bring the front thereof in a parallel line with the shore, and the other extended westerly, diverging from the first in such manner, as to form an angle of about forty-five degrees.

The original building had a large hall, and was designed as a dwelling house: the west wing had also a large hall below and lodging rooms above, and the south wing consisted entirely of lodging rooms. The whole was two stories high.

Catharine Bennet, a witness on behalf of the defendants, on being sworn, testified, that her husband, Joshua Bennet, who occupied the premises in question, about two years ago became embarrassed in his circumstances, and that the property was sold on executions as aforesaid.

After the sale, the plaintiff came to the house and notified them that they must move out as soon as possible, alleging that he had sold the property, and wished them to say that they would leave it immediately. This was in the month of April, 1815. Shortly after this interview, her husband was taken sick and was thought to be a dying man. While he was in this situation, on a Sunday morning, a letter was received from the plaintiff, directed to her husband, and brought by a black man, and her husband being too ill to write, Dr. Lewis, then attending her husband, by her directions,

wrote an answer. Before her husband had wholly recovered, he went abroad for the purpose of obtaining a place for removal. During his absence, and on a Saturday, in the early part of May, the plaintiff came to the house, and said he came to inform them, *that he had then sold the place to his nephew, Capt. Read, of Philadelphia*; that they must move, and he wished them to do so immediately. The witness then mentioned the situation of her husband, and said, that although she wished to remove, it was then impossible. He strenuously urged their immediate removal, and said they must absolutely move in a week; against which the witness remonstrated, stating to the plaintiff that her husband would not return in a week. The plaintiff, nevertheless, strongly insisted, that she should remove within a week, whether her husband returned or not.

The witness asked permission of the plaintiff, for some other rooms in the building, which would not incommode his nephew; but *the plaintiff insisted on an entire removal from the building, as nothing else would answer his purpose.*

He then offered the witness \$100 if she would move in a week. She expressed her doubts whether it were possible; but said that, if possible, she would: at the same time she requested the plaintiff to reduce the offer to writing, with which he complied, and delivered her the paper, which the witness had either lost or mislaid.

Previous to the arrival of her husband, she had prepared for moving, and had every thing ready for that purpose in the east room. Her husband returned, and they removed, with their whole family, by water, on a Tuesday, but not within the week prescribed by the plaintiff.

At the time they left the house, *straw mats and a number of old bedsteads were left in all the lofts. The garret of the south wing was not wholly floored.*

The plaintiff had informed the witness, that his nephew was coming to take possession, as soon as they left the premises.

The witness did not recollect in what situation the doors of the building were left, but remembered, that the keys were left with a neighbour.

The Monday after they had removed, she heard of the fire; which occurred, as she understood, on the Thursday preceding.

On the cross-examination, this witness stated, that her husband informed her, that the plaintiff had become responsible for him in the Orphan's court, and that the property was sold on that account. She had understood, that the plaintiff had offered to let them stay in the house, by giving security for the payment of the rent, and a respectable man volunteered to become security, but the plaintiff refused to accept him. She calculated on staying in the house, and was surprised to hear that they must move.

The several depositions of Benjamin Wardell, Jacob Dennis, Robert Parker, William Haight, Thomas Chandler, Mary Crawford, William Sears, and Frederick Montmollin, witnesses on behalf of the defendants, examined under the commission, and also the deposition of John Williams, were here introduced and read by the counsel for the defendants.

Benjamin Wardell and Jacob Dennis estimated the value of the property insured, previous to the fire, at \$10,000, and the value of the remaining part after the fire, at \$3,000. Haight estimated the value, before the fire, at \$9,000; after, at \$3,000. From the deposition of Chandler on this point, it appeared, that the value of the property before the fire, was \$8000; afterwards, at \$2600: And John Williams and William Sears estimated the original value at \$8000.

From the several depositions of Wardell, Dennis, and Haight, it appeared, that soon after the fire, they had conversations with the plaintiff, in which they inquired of him whether the property was insured, and he replied, for a mere trifle, and mentioned 4 or 5000 dollars. He also told these witnesses, that he had met with a great loss, which would ruin him. He said that he did not

know of any enemy he had, who would be so bad as to do him this injury, except one Barnes Smock, against whom the plaintiff had, before that time, brought a suit for defamation. The plaintiff appeared to be in much distress.

On this point Haight stated, in his deposition, that on the Sunday after the fire, he saw the plaintiff at Jacob Hart's Inn, at Colt's Neck, and asked him, if the property was insured. The plaintiff answered, *some*, (which the witness understood to mean a *small amount*,) he appeared to be in distress, and spoke of enemies. The next day, in the forenoon, in a conversation with the plaintiff, he told the witness, that the buildings were insured for 4 or 5000 dollars, and the witness inquiring of the plaintiff, in the afternoon of the same day, for how much the property was insured, he informed him it was insured for \$10,000. In this conversation, the plaintiff endeavoured to evade discoursing concerning the insurance.

From the affirmation of Mary Crawford, taken under the commission, in relation to this subject, it appeared, that the next day but one after the fire, in the morning, the plaintiff came to her house at Long Branch, and said he wished he could find out who had burned the building; he was much agitated, and shed tears. He said that he was ruined; and in an enquiry by the affirrant whether he had not sold the property, the plaintiff answered, that he had sold it to his nephew; but as there was the most perfect understanding between his nephew and himself, there were no writings, and the loss would fall on him. She inquired whether it was not insured, and he answered, for a mere trifle; and on her further inquiring for how much, he hesitatingly replied, that it was insured for \$5000.

On this subject, the plaintiff also told different stories to Benjamin Wardell. The plaintiff, in the several conversations with Wardell, Dennis, and Haight, mentioned the great disappointment it would be to his nephew, who was coming on from Philadelphia to take possession; that he believed it was done

by design, and that he did not know that Bennet had moved out of the house. To Haight the plaintiff said, that he did not hear of the fire *until Saturday*, and gave the same account to Mary Crawford.

It further appeared, from the deposition of Haight, that on the next day after the conversation at Hart's tavern, and before the witness was informed by the plaintiff that the property was insured for \$10,000, the plaintiff requested the witness to draw up a certificate, setting forth the value of the buildings destroyed, with the character of the plaintiff, which certificate was to be signed by three judges of the court of Common Pleas of Monmouth county, who were to be at Red-Bank on that day. This certificate was drawn up by the witness, presented by him, and signed by judges Pintard, Patterson, and Tiebout.

In this certificate the value of the property was estimated at \$8000, and the plaintiff afterwards complained to the witness, *that the judges were a set of hide-bound fellows, for not setting a higher value.*

From the conversations which this witness had with the plaintiff, before the witness made the inquiry concerning the insurance, he supposed that the plaintiff had sustained a total loss. For this reason the witness felt great commiseration towards the plaintiff, and was, therefore, anxious to render him every assistance. At the time the plaintiff first informed the witness that the property was insured by the defendants for \$10,000, it appeared to the witness, from previous conversations with the plaintiff on that subject, that he wished to conceal the amount of the insurance, or to evade giving direct answers on the subject; and the witness states, that if he had known that the property was insured for \$10,000, he would not have written, or applied to the judges for the certificate.

Before the destruction of the buildings, the plaintiff, in divers conversations with the witness, informed him, that he had sold the property to his nephew, Captain Read, of Philadelphia, for \$9000, who was coming on to take possession. The plaintiff also informed this

witness that he had been down to Joshua Bennet's, and made the offer to his wife, as before stated in her testimony, and had further offered to relinquish a balance due on execution against her husband. The plaintiff afterwards informed the witness that he had seen Bennet, who was highly pleased with the offer, but wished permission from the witness to enter into possession of that part of the south wing of the building standing on land which Bennet alleged belonged to Charles Haight, of Philadelphia, a brother of the witness, the possession of which part of the building had been given to the said Charles Haight by the said Bennet, at the time his personal property was sold. The plaintiff requested the witness not to permit Bennet to move into that part of the building, as he would be a great *incumbrance to him*.

On the subject of the fire, it appeared that the building was destroyed on the night of Thursday, the 18th day of May, 1815: and from the depositions of the witness, Haight, it appeared that in the morning after and during Friday it was very rainy, and the roads being sandy, the waggon tracks were filled up. Towards evening, on Friday, the witness observed in the road which led from the plaintiff's house to the building, only the tracks of a single horse which had passed up after the rain.

From the deposition of Benjamin Wardell before mentioned, it appeared that he lived about a mile from the building at the time it was destroyed, and that about twelve o'clock at night he saw the light, and proceeded on horseback to the building, where he found John Coal and Joseph Slocum endeavouring to extinguish the fire; others soon collected for the same purpose, but it was found impossible, *and the three several roofs of the building fell in very near, or at the same instant*.

From the cross examination of William Haight, it appeared that Joseph Parker and Robert Parker, were the reputed owners of one acre of land whereon a part of the south wing of the building stood; and that Charles Haight, of Philadelphia, purposed to

become the purchaser of that land, and a written contract was made between the Parkers and Charles Haight for the purchase thereof, but the draft of a deed afterwards brought by the Parkers to Haight, contained an express reservation of the buildings, which being, as Haight alleged, contrary to the provisions of the agreement aforesaid, the deed, for that reason, was not received by him.

From the affirmation of Robert Parker, taken under the commission, it appeared that a part of the south wing of the said building, containing eight rooms above and below, stood on ground for which Joshua Bennet had no title—the same being vested in the affirmant and his brother Joseph. About six years before, they had agreed to sell one acre of land adjoining Bennet's lot to him, and to make him a deed when he should pay the purchase money, and at that time the said Bennet went into possession of the said acre of land, but he had failed in making such payment. Since the time of the agreement, the said Bennet had made an addition to his house, as aforesaid, on a part of the land he had so agreed to purchase.

From the cross-examination of this witness, it appeared that about the time the personal property of Bennet was to be sold by the Sheriff of Monmouth county, Charles Haight of Philadelphia applied to the affirmant and his brother to purchase the same acre of land they had before agreed to sell Bennet. They agreed to sell the land to Haight, but not the buildings. Afterwards, a deed was drafted for the land, reserving the building of Bennet according to the understanding of the contract by the Parkers, and for that reason the said Haight refused to receive the said deed.

From the deposition of Thomas Chandler, it appeared that a short time after the fire, the plaintiff came one morning to the store of the witness, about two miles from the building destroyed, and said that he was informed, that the witness had seen a man and horse go past his store up the road in the night on which the house was burned. The witness replied he

did not, but that he heard a horse go past the store that night, up the road very fast, and expected there was some person on him who was going after a doctor; but next morning, when he heard the buildings were burned, he was of opinion it was that person who burned them. The plaintiff answered, either "undoubtedly it was," or, "in my opinion it was," the witness is not certain which. And the plaintiff added, that any person who would do such a thing, would not be too good to stick a sword in him. The witness replied, No, nor in any other person if he was paid for it. The plaintiff then asked the witness what damage he thought the house being burned, would be to the place? The witness answered, that he thought it would be five thousand dollars a year damage. The plaintiff inquired what the opinion of the people was about the house being burned? The witness answered, that the opinion of the people was, that he, the plaintiff, was the cause of it. The plaintiff said, *he did not care what they thought, but they must take good care how they talked, or he would make them pay for it.* The witness replied, no doubt of that; if he was bad enough to have the house burned, he would be bad enough to make a person pay for their talk. The witness then told him, he should not have left such property alone. The plaintiff then observed, he did not know when Bennet left it; and did not know he was out, until the morning he came down and heard the building was burned. The witness then asked the plaintiff, if William Sears did not tell him at Monmouth, on Wednesday, that Bennet had left it on Tuesday, about 5 o'clock. The plaintiff answered no. The witness replied, that William Sears had informed him, that he told the plaintiff so; and that he, the plaintiff, said he was very glad to hear it, as he wanted to write to his nephew in Philadelphia. The plaintiff said it might be so, but he did not recollect it; and then added, that he had told Mrs. Quay, as soon as the house was burned, that he, the plaintiff, would be suspected of burning it, as it was so uncommon a thing to insure houses in the country,

In the course of the said conversation, the witness asked the plaintiff, if he did not expect to meet with some difficulty in getting the insurance, as he left the property alone? The plaintiff replied, "not at all, the people in New-York know me very well." The plaintiff did not, in that conversation, mention any amount of insurance on the said property, nor did he speak of the loss which he would sustain in consequence of the said fire.

On the cross-interrogatories, in relation to the ownership of a part of the land on which the building stood, the testimony of this witness coincided with that of Haight on the same subject.

From the deposition of William Sears, of Shrewsbury, it appeared, that Joshua Bennet removed from the building aforesaid, on Tuesday the sixteenth of May. The next day, as the witness was on his way from his place of residence to Philadelphia, on business, he stopped at the tavern of William Craig, at Freehold, near the residence of the plaintiff; and that while the witness was in the stable where his horses were baiting, the plaintiff joined him, and inquired whether Bennet's family was about moving. The witness informed him, that Bennet had moved the day before; at which the plaintiff expressed much satisfaction, and said that he had that morning received a letter from his nephew in Philadelphia, who wished to have the house cleared immediately, as he wanted to send on his groceries. The plaintiff said that he would write immediately to his nephew, if the witness would carry the letter; and the witness agreed to carry the letter, if the plaintiff would endorse on the letter the street and number of his nephew's residence. The plaintiff then went away, for the purpose, as the witness thought, of writing the letter, but did not return during the stay of the witness, who remained at the tavern about an hour after.

After his return from Philadelphia, the witness mentioned this conversation with the plaintiff to many persons, and saw the plaintiff several times, but he never spoke of the subject of that conversation to the witness.

From the deposition of John Williams, a justice of the peace, in and for the county of Monmouth, residing in Shrewsbury, at the distance of about three miles from the building destroyed, it appeared that he was at home at the time the fire took place, and saw the plaintiff on the Monday after the fire, at the house of the widow Crawford, about a quarter of a mile from the ruins. The plaintiff, with William Lloyd, Benjamin Wardell, and George Poole, had met for the purpose of making out certificates of the loss for the plaintiff. At this time, the witness was not requested to sign the certificate, but afterwards, the plaintiff presented one to the witness, which stated, in substance, that the property was worth \$ 10,000, and that the plaintiff had sustained that loss without fraud on his part, but by misfortune. The witness refused to sign the certificate on the grounds stated in his deposition, in answer to the cross-interrogatories—because he thought the building valued too high; and because he was not satisfied that the building had been burned without the knowledge of the plaintiff, or without his agency.

From this deposition it further appeared, in substance, that this witness resided upon the direct and usual road leading from the building destroyed, to the house of William Brinley, Esq. who signed the certificate to answer the terms of the policy as aforesaid; and that to go to the said Brinley's house, from the building destroyed, on the road, it was necessary to pass the house of the witness, though there is a foot path from the building destroyed, to the house of Brinley, which is nearer than to the house of the witness.

It appeared by the deposition of Frederick Montmollin, of Philadelphia, taken under the commission, that the witness, received written instructions from the plaintiff, in the month of April, 1815, directing him to advertise and make sale of the property insured, and that the plaintiff verbally informed the witness, that the property was insured at the Eagle Company, for one year from the 15th of April, for \$10,000; and limited the amount for which it should be sold at \$8000. The witness and his partner in

business, accordingly advertised it for sale, on the 2d day of May, 1815, at the Merchant's Coffee-House in that city, but there being no bidder to the amount limited, the property was not sold.

A letter from the plaintiff to Joshua Bennet, dated April 22d, 1815, sent by Adam his black man, was here produced in evidence on behalf of the defendants, and proved by Mrs. Bennet to be the letter referred to by her, in her examination.

In this letter the plaintiff states to Bennet, that he had received a letter from Philadelphia, and wishes to know of Bennet, whether he meant to redeem the property: that he, the plaintiff, was going to that city, where he expected to sell the property, which, if not redeemed by Bennet by the first of May, he must quit the possession thereof. This letter also contained an intimation, that if Bennet did not remove, that the plaintiff could remove him to the gaol at Freehold.

The counsel for the defendants, here offered to prove certain incumbrances on the property insured, and contended that they ought to be permitted to show the real value of the property, to the plaintiff, as evidence of fraud.

The counsel for the plaintiff objected to the admission of such testimony, insisting that it was of no importance whether the property was incumbered or not, but the court overruled the objection; and the counsel for the defendants then offered to read sworn copies from the registry of mortgages, in the office of the Register or Clerk of the county of Monmouth in New-Jersey, as evidence of the incumbrances.

This evidence was objected to by the opposite counsel, on the ground that the original mortgages being the highest evidence of their authenticity, ought to be produced.

It was contended by the counsel for the defendants, that the registry of deeds and mortgages in the several states, were necessarily of equal, if not of greater validity for the purposes of proof, than the original instruments. The acts in the several states, in relation to this subject, had effectually guarded against fraud

and imposition. The officers, appointed to take the acknowledgment and to make the registry, were sworn; and, in the view of the counsel, one of the principal objects of these acts, was to give a perpetuity to these assurances of private property, of which the originals were not susceptible. They argued strenuously against the inconvenience attending the doctrine for which the opposite counsel contended.

His honour the judge observed, that this was a new and a very important question. He was not aware that the point had ever received a judicial decision in this state, and had doubts on the subject, but at present, was inclined to think the evidence offered inadmissible, and should, therefore, overrule it. Should the counsel for the defendants wish, he said he would reserve the point; but the counsel for the defendants then proceeded to produce proof of the admissions of the plaintiff, concerning the incumbrances aforesaid.

For this purpose, Charles Haight, of Philadelphia, was introduced and sworn, who stated, that in the month of March, after the plaintiff purchased the property in question, he offered to sell it to the witness for \$1005, the sum for which the plaintiff purchased it at Sheriff's sale, subject to the incumbrances, which consisted of two mortgages, as the plaintiff informed this witness.

This witness, on being cross-examined, did not remember the amount the plaintiff stated the property cost him, but it was not near the sum of \$10,000, but between 6 and 7000 dols. including the incumbrances.

Mrs. Bennet was again called by the counsel for the plaintiff, and stated, that there were twenty rooms in the south wing of the building, built by the Philadelphians. The large hall was 75 by 30 feet, having twelve rooms above; but she did not know how much money was advanced, for building any part, by the Philadelphians.

Peter Brewer, a witness on behalf of the defendants, residing at Freehold, in the county of Monmouth, on being sworn, stated, that on the night the buildings

were burned, he was driving a covered waggon from Spotswood to Long-Branch, being engaged in the business of carrying fish from Long-Branch into the country; and while on the road, he observed a considerable light in the direction of the buildings, and having come out on the main road, leading from Freehold to Long-Branch, near the tavern then kept by Jacob Hart, at Colt's Neck, and proceeding along the road about half a mile, when nearly opposite the house formerly occupied by Edmund Williams, and about ten miles from the Long-Branch, he met a man on horseback going from the Branch towards Freehold, who passed him on the right hand, and so near that he could have reached him with his horsewhip. When he first saw him he was on a half run, but as he approached, he rather took up, or held in his horse, and passed on a trot.

This man, the witness fully recognized by his features, and *knew to be Adam the black man of the plaintiff*. He knew this black man well, and had often seen him; he was a fiddler, and had very frequently fiddled where the witness had been. At the time he met the black man, he saw the light of the fire, and had seen it some time before. At the time the black man passed him it was moonlight, but a little cloudy; and the witness on looking at the black man raised from his seat. He met no other person on the road that night.

The witness arrived at the Branch at day-break, and that morning mentioned the circumstances concerning seeing the black man of the plaintiff on the road to Cornelius Brewer and Benjamin Wooly, after he understood that Bennet's house was burned. He afterwards mentioned the thing to his brother-in-law, who lived about two miles from the Branch; but hearing that the plaintiff had threatened any one who said any thing tending to implicate him, the witness forbore to mention it to any other person; and when inquired of afterwards by several, he answered that he knew nothing concerning the matter.

In a very particular cross-examination, this witness, among other things, mentioned, that the night was light and the moon was on the right side, the road was level

and the woods cleared on each side, at the time he met the black man. The horse on which he met the black man was one of the two belonging to the plaintiff; and the witness thought it was the smallest one. The black man was dressed in a different dress from that in which the witness had seen him before. He wore an old great-coat, and the witness wondered what the negro was doing there so late. After the black man passed the witness, and he had proceeded four or five miles, it rained hard.

Cornelius Brewer and *Benjamin Wooly*, were sworn as witnesses on behalf of the defendants, and corroborated the testimony of Peter Brewer concerning his conversation with them the morning after the fire. Wooly further swore, that he lived about two miles from the building which was burned, and during the same night was up with a sick child, and hearing a horse coming up the road very fast, he went to the kitchen door, and saw him coming from towards Bennet's. There was a man on him who passed the witness at full speed; and as the road was hard, he heard the horse until he got (as witness judged,) a mile and a half or two miles distant.

Lewis Abrahams was here called as a witness on behalf of the plaintiff, who stated, that the next day after the fire, it was reported at Spottswood, that Smock had burned the buildings. This witness, a short time after the fire, had a conversation with Peter Brewer, who informed him that on the night the fire happened he had met a man on horseback who had a great coat on, but could not tell what sized man he was, or the colour of his horse.

From the cross-examination of this witness, it appeared, that the time of this conversation with Brewer, was when he made his trip from the sea-shore, after the fire, Brewer being engaged in carrying fish from the shore into the country.

From the testimony of Peter and Cornelius Brewer, it appeared, that this trip was not taken until the next

week after the fire, and Peter did not remember the conversation alluded to by Abrahams in his testimony.

From the testimony of William Harbert, a witness on behalf of the defendants, it appeared, that on the Sunday after the fire, Peter Brewer was at the house of the witness, and said that he met the plaintiff's negro the night of the fire: and the wife of the witness, the sister of Brewer, being present, and hearing him, cautioned him from saying any thing concerning the matter, lest the plaintiff might prosecute him.

Charles Haight was again called by the counsel for the defendants, and stated, that he saw the plaintiff early in May at the Branch, who told him that he had sold the property to Capt. Reed for \$9000, and that every preparation was making by his nephew to move in. But the witness remained at the Branch until the 17th of May, and *no preparations were made at the building insured for gardening.*

The counsel for the defendants here called *Adam Wyckoff*, a black man, as a witness. His testimony was objected to on the ground that he was the slave of the plaintiff; and in proof thereof, the counsel for the plaintiff produced a bill of sale from William Wyckoff, of Monmouth county, New-Jersey, to the plaintiff, bearing date May 1, 1812, for the said negro man, Adam, as a slave, for the sum of \$250; and also proved the hand-writing of Mr. Wyckoff to the said bill, and that Adam had lived with him several years before its execution as his slave, and with the plaintiff in that condition since 1812.

The counsel for the defendants objected to this proof as evidence of slavery; and in support of their objection, cited 1 Cox's Reports, p. 328.

The court over-ruled the objection, and the counsel for the defendants thereupon offered to prove Adam Wyckoff a free man.

For this purpose, the counsel produced and proved an instrument in writing, in the words and figures following:

"Adam, the bearer hereof, is my servant, and has my liberty to work for himself, to any willing to employ him; provided, he pays me sixty-four dollars per year, for four years.

"Adam has served me five years as a slave, and has been a faithful, obedient servant.

(Signed)

JOHN QUAY."

Freehold, Monmouth county, }
10th April, 1816." *}*

The counsel for the defendants then offered to prove a tender, on behalf of Adam, to the plaintiff, of \$256, being the whole of the money to be paid, according to the condition of the said instrument; insisting that Adam thereby became a free man.

This evidence was objected to by the counsel for the plaintiff, on the ground of its not amounting to a manumission of Adam.

This question gave rise to one of the most splendid exhibitions of talent, on both sides, perhaps ever witnessed in the Hall.

Mr. Ogden and Mr. Colden, for the plaintiff, objected to the competency of Adam as a witness:

1. Because the instrument (above set forth) did not, on its face, purport to be a manumission of Adam, or a promise to manumit him; but was only a permission to work for himself for a limited time.

2. Because the tender, offered to be proved, was not conformable to the condition of the instrument itself, by which the money was to be paid; inasmuch, as it was to be paid in four annual payments. The plaintiff, therefore, was not bound to receive it in any other way.

3. Because the question whether Adam was a slave or not, must be decided by the laws of the state of New-Jersey: it was there that the instrument under which his freedom was claimed, was made; and to the construction and legal effect of which the *lex loci* must be applied. That, according to the laws of New-Jersey, the paper relied on, even supposing its condition complied with, would not amount to a manumission of

Adam, who would, notwithstanding, still continue the plaintiff's slave.

The counsel read from Patterson's edition of the Laws of New-Jersey, page 307, a part of the act of that state entitled, "An Act respecting slaves," passed 14th March, 1798.

They also cited the cases of the State vs. Isaac Emmens, and the State vs. Mathias Cramer, on habeas corpus, wherein Richard and Phebe, negroes, were brought up, and claimed their freedom. Pennington's Reports, p. 10.

4. Because Adam, being a slave by the laws of New-Jersey, where his master resided, might, under the provisions of the Constitution and Act of Congress on this subject, be claimed as his slave, and taken back to Jersey as such: his slavery therefore followed him into this state, and here as well as there disqualified him from being a witness.

These objections were answered by Mr. Wells and Mr. Emmet for the defendants, who contended:

1. That though there was an artful omission in the paper referred to, of any absolute expressions of freedom or manumission of Adam, yet that the permission to *work for himself*, was not limited to the four years; but, in favour of liberty, must be construed a permission to work for himself for life; provided, that *for four years* he paid the stipulated annual sum.

2. That Adam had a right, at any time within the four years, to tender the whole amount to be paid by him to the plaintiff; and that the plaintiff could not object to receiving it, because the whole time had not elapsed, inasmuch as the extension of credit was in favour of Adam, and might, therefore, be waived by him—especially, as the effect of it would be in favour of liberty by producing a speedier emancipation.

3. That the relation between master and slave was dissolved, by a permission of the latter to *work for himself for life*; because all that the master was entitled to was the *service* of the slave. In this case, the master parted with that *service*, by allowing Adam to

work for himself. The instrument, therefore, amounted virtually to a manumission.

4. That as between the master and slave, the latter, like the ancient villein, became a free man the moment the master entered into a contract with him. The paper referred to, amounted to a contract on the part of the master with his slave, touching his liberty, which, upon general principles, independent of any particular statute, made him free, especially upon the performance of the contract on his part.

5. That Adam, by the laws of New-Jersey, even if his condition were to be determined by those laws, would be adjudged a free man, because the statute of that state does not apply to a case of *prospective* or *conditional* manumission, and would, therefore, be determined independent of it: and because Adam, having on his part complied with the contract, could enforce a *specific performance* against his master, and compel him to comply with the formalities directed by law to complete his manumission in that state. Besides, Adam had on his part performed the contract; and the plaintiff could not take advantage of his own wrong by insisting that Adam was still his slave, because he, the plaintiff, had not performed his part of the contract.

6. The competency or incompetency of a witness must always be determined by the *lex fori*: and, therefore, as it was objected that Adam was an incompetent witness, because he was a slave, the question, whether he is so or not, must be decided according to the laws of this state, where he is offered as a witness, and not by those of New-Jersey.

7. By tendering to his former master the money he was to pay him, Adam had a right to go where he pleased; and having come into this state, he was entitled to the full protection of its laws. That the plaintiff could not, either under the constitution or act of Congress relative to slaves, reclaim Adam in this state as a slave, and take him back to New-Jersey, because none but *fugitives from labour* could be so

reclaimed. Adam could not be considered a fugitive from his master's labour, when he had given him permission to work for himself; subject only to a condition, with which he had offered to comply.

8. That, according to the laws of this state, as judicially settled, the paper in question, coupled with a payment of the money, or a tender of payment by Adam to his former master, as between them, amounted to an emancipation; and, consequently, made him a competent witness in this cause.

The counsel cited the cases of *Kettletas vs. Fleet*, 7th John. Rep. 324, and *Hopkins vs. Fleet*, 9th ib. 225.

His honour, the judge, after observing that the question of the admissibility of Adam as a witness, which had been raised for decision, was a new and interesting one, determined:

1. That the paper referred to, independent of any statutory provision on the subject, amounted to a contract between the master and his slave for the conditional emancipation of the latter, who, upon complying with its terms on his part, became a free man; at least, as between himself and his former master.

2. That Adam had a right to tender to the plaintiff the whole of the money that was to be paid to him, at any time within the four years, from the date of the contract; for as the credit was, exclusively, for the benefit of Adam, he might therefore waive the same.

3. That whatever might be Adam's condition in New-Jersey, in consequence of the particular statute of that state, referred to on the argument, prescribing the mode of emancipating slaves, yet it could not well be doubted that even in that state Adam could enforce this contract against his master, by compelling him to emancipate him in due form of law: but, that however that might be, Adam was no longer in that state; he was here, and offered as a witness, and unless disqualified according to our laws, must be admitted. That the decisions in our Supreme Court, which had been cited, were obligatory upon him: according to which

it had been determined, that a paper of a similar kind to the one proved, operated as an emancipation by the master of his slave, upon his complying with its terms; though, upon principles of public policy, the law left the master liable for the maintenance of his former slave in case of his becoming a town charge. His Honour was, therefore, bound, he said, to consider this man free, and to admit him as a witness, upon his proving a tender to the plaintiff of the money to be paid according to the condition of the instrument*.

To prove the tender of the money, the defendants' counsel then called Thomas Fessenden, from whose testimony it appeared, that during the last summer, and before the examination of Adam, in July, this witness went to the house of the plaintiff, and, on behalf of Adam, tendered the plaintiff \$256, the amount named in the instrument, which Adam was to pay; and offered the plaintiff a manumission paper for him to sign, but he refused to sign the paper or receive the money, alleging, he was not bound to take the money, except in four yearly payments. He did not pretend but that the paper was to make Adam free.

Isaac Hatch, a witness on the part of the defendants, proved, that recently the same amount was tendered by Adam in the presence of Hatch; and the plaintiff again refused to receive the money.

Adam Wyckoff, a black man, was then called as a witness on behalf of the defendants, and on being examined by his Honour the judge concerning the nature of an oath, and cautioned by him to testify truly, was sworn.

* The plaintiff had regularly attended in court from the commencement of the trial, and was standing near his counsel eagerly listening to every word that fell from his Honour the judge, while he was delivering his opinion on this question. But the judge had scarcely pronounced his decision, by which he declared Adam a competent witness, when the face of the plaintiff, covered with drops of sweat which burst from every pore, suddenly changed to a deadly paleness—his whole frame was convulsively agitated, and he retired with difficulty and tottering steps from the court-room; and, as we have understood, actually fell at the outside of its door in the hall. He did not return until the next day after Adam's examination, and the other evidence had closed.

It appeared from his testimony, that he left the service of the plaintiff in April last. That in the month of March, 1815, when Adam was alone in the barn of the plaintiff at his work, the plaintiff came there and told Adam that he, the plaintiff, had a particular business to be done. Whereupon Adam asked him what it was, and the plaintiff asked Adam if he could keep a secret. Adam replied that he could. The plaintiff thereupon charged Adam not to tell his wife what he, the plaintiff, was about to say to him, because a woman could not keep a secret; and Adam said he would not. The plaintiff then told Adam that he wanted him to go down and burn some buildings at the Branch. Adam told the plaintiff, that he did not know the way, as he had not been there in twelve or fifteen years. The plaintiff said that he would send him down with a letter, and he must look his way. The plaintiff further told Adam, that when he should go to the Branch with the letter, he must deliver it to Mr. Bennet, and tell Bennet's son, a little boy, whom he would see there, that the property belonged to his master, and that he, Adam, wanted to look at the same. Adam said that he would go and look, and the plaintiff told him, that when he went, he must look up in the lofts, and see where there were good places to set fire to.

At this time he had not consented to set fire to the buildings. Afterwards, according to the directions of the plaintiff, he carried a letter from him to Mr. Bennet, who lived in the building. When Adam went down with the letter, he delivered it to Mrs. Bennet, whose husband was then sick in his room, and the Doctor attending him. She told him to wait for an answer, and Adam went out and saw a boy, whom he informed that the property, he had understood, belonged to his Boss, and that he wanted to look at it. The boy went with him through the rooms below, above, and in the garrets of the south and west buildings, but not within the main part of the dwelling house, as the family resided there. From the house Adam went to the barn and carriage house. In the garrets of the

south and west wings of the building, Adam saw straw-mats and beds, to which fire could be easily set; and much straw was lying in and about the barn. He returned to the house and sat down in the kitchen, and shortly after an answer was delivered for his master, and a letter to Mr. Haight, who lived on the road to Freehold, about ten miles from the Branch.

On his way home he delivered the letter to Haight, and when he arrived at his master's house, and when they were alone, the plaintiff asked him if he saw any thing to which he could set fire. Adam replied, that he saw in the south and west wings in the garrets straw mats and beds lying against or near the roof, which might easily be fired. The plaintiff inquired whether he took particular notice of the road, to which Adam answered, that he did, and that he could go there at any time of night.

The plaintiff then told Adam that he, the plaintiff, wanted him to go down at night and burn the buildings. Adam told his master *it was a dreadful thing—state-prison work*; and should he be caught there, the people would throw him into the fire and burn him up. The plaintiff told him that he must never own it. Adam told the plaintiff that if he, Adam, should consent and do the act, and it should ever come out against him, it would be his ruin for ever. Adam further mentioned to the plaintiff the difficulties in the business; but the plaintiff told him that he, the plaintiff, would protect him, and said, "they sha'n't hurt you." The plaintiff before or afterwards, in another conversation, told him, that if he would burn the buildings, he would give him his freedom and \$100. This offer was made somewhere in or about the barn, and Adam did not remember whether it was after or before he had been with the letter to Bennet. The plaintiff further told him, that when he wanted him to burn the buildings, he would let him know.

Afterwards, and on a Tuesday, the plaintiff with Mrs. Quay, went to New-York, and Adam drove the waggon to Middletown-Point. When they got down

to the ferry-house Mrs. Quay got out of the waggon and walked down to the boat, while the plaintiff and Adam rode alone. On the way the plaintiff asked Adam whether he would burn the buildings, and whether he had made up his mind; but at this time Adam gave his master no positive answer. The plaintiff told Adam further, that he should leave Mrs. Quay in New-York, and that Adam must come for him with the waggon on Friday. And he went down with the waggon on Friday accordingly, and on that day, while Adam was driving the plaintiff from Middletown-Point to Freehold, after his return from New-York, when they had arrived at a by-place in the woods, the plaintiff inquired whether Adam had made up his mind to burn the building; and as a further inducement, the plaintiff offered Adam, that if he would do it, he, the plaintiff, would give Adam \$100, and him and his wife their freedom; their child should be taught to read and write, and be learned to get her living by her needle. The plaintiff further told Adam, that he should stay with him two years, and he would pay him \$100 a year for his work, and that with the \$300 he would have a good beginning.

Adam thereupon consented to burn the buildings, and told the plaintiff that "he would do it." At this time the plaintiff told Adam, that he had insured the property in New-York, and paid sixty dollars and something over, but how much Adam did not remember.

The plaintiff afterwards instructed Adam what means were to be employed to effect the object: that he must make a tinder-box and steel, and procure a flint, and inquired whether he knew how to make such things? Adam told him that he did; but that he had those instruments at Mr. Wyckoff's, where he would go and get them.

Adam afterwards went to Mr. Wyckoff's for that purpose, but could not find the fire-works, and so informed the plaintiff.

In another conversation, the plaintiff further instructed Adam to go to a blacksmith and get a steel; but

Adam objected, on the ground that the people would know, or find out by that means. He told the plaintiff, that he would get an old rasp or steel and grind off the edge, and try it by himself in the garret. This he afterwards did, and found, by making trial in the garret, that he could strike fire.

After this, the plaintiff instructed Adam to make brimstone matches of cedar; but Adam said that they would break, and proposed, as the better course, to roll rags in melted brimstone, which he afterwards did, when all the family was in bed.

A short time afterwards, the plaintiff informed Adam, that he had been informed by a letter, on Thursday morning, that Bennet had moved out of the house on the day before. He further told Adam, to fix the horses, for that he, the plaintiff, was going to see Sheriff Gordon, and Mrs. Quay would go to see Mrs. Conover: that he was going to get his business settled, and his papers fixed. He further instructed Adam to prepare himself to go down that night, by putting his old clothes in the barn, and to hide the old saddle and bridle, so that the boy could not see them.

The plaintiff then went away, and returned about sun-down, and told Adam that he had all his business settled, and had got his papers: and that Adam must go that night and burn all the buildings, and the barn: that he must burn all down: that he must start at nine o'clock, and that he could ride there by the time the people were all in bed.

Every thing being ready, after having got his supper, Adam went to the barn and shifted his clothes. Pursuant to the directions of the plaintiff, Adam went on the back road, for the purpose of avoiding being seen in Freehold. He came out on the main road near Mr. Wyckoff's.

Adam rode down to the Branch, and near to Mrs. Crawford's house tied his horse in the cedars; his master told him to put his horse under Mrs. Crawford's shed, but he was afraid if he was discovered, he might

be cut off from his horse*. After this, he went down and looked round the house of Mrs. Crawford, and then returned to his horse and removed him to a spot where the cedars stood thicker. He then took his fire-works and went to the buildings; and according to the directions from the plaintiff, he went into the different parts of the house, and examined whether any person was there; and having found there was not, he went into the garret of the south wing, where he struck fire and lighted a candle. He purposed, according to the direction of the plaintiff, to set fire near the ends of the garret, that the wind from the sea might the more easily carry it through the building; but found that the south end of the garret was not floored. He found a parcel of straw mats piled together, and set the fire as near the south end of the garret as possible. He then went into the garret of the main part of the building, and in the eastern part next to the sea, he found an old bedstead with straw mats thereon, to which he set fire. From thence he went into the garret of the west wing, where he also set fire to straw mats; and there was in both wings considerable straw scattered round the garret floors.

After setting fire to the house, he attempted, according to the directions of the plaintiff, to go to the barn and set fire to that; and for that purpose took his candle, which was lighted, and put it under his hat, and proceeded towards the barn, but the wind blowing out the candle, and the fire in the building beginning to crack, and the flames to make their appearance, he became much frightened, and determined to quit the horrid business. He therefore put his candle in his pocket and ran to his horse, and mounted him as soon as possible. The horse seeing the flames, became frightened, set off at full speed, and jumped over

* Freehold, the residence of the plaintiff, is about nineteen miles westerly from this building. The road on which Adam came, runs some distance on the south of the building, and between that and Mrs. Crawford's, who lived about a quarter of a mile south of the building. As you come down this road, and before you come to Mrs. Crawford's, on the right hand side of the road, are the cedars spoken of in this testimony.

the fence. As the reins of the bridle were old, Adam was afraid to hold in the horse hard; and for the purpose of managing him, lay over his neck, reaching both hands as near the bits as he could, and sawed them in the mouth of the horse. The horse continued at full speed for a mile and a half or more, before he could manage him.

When he came near 'Tylee Williams', Adam met a fish-waggon; he was then on a canter, but he took his horse up in a trot: for the purpose of avoiding the man and preventing him from finding out who he was, he turned out of the road on the right of the waggon, under the shade of a tree, and passed the man on the south side, but did not know him. He rode home and put up his horse in the stable, cleaned him down and thoroughly cleaned his hoofs, that no person would know that he had been out, as the plaintiff had instructed him. At the time he passed the waggon the moon gave a little light; but before he arrived home, it rained very hard.

After he had taken care of the horse in the stable, as aforesaid, he changed his clothes, went into the house, and lay down upon a bench by the kitchen fire.

At day-break the plaintiff came to him and inquired how he had made out, and Adam answered, very well—that he had set fire to the buildings, but not to the barn, for the wind had blown his candle out. The plaintiff asked him if he had cleaned his horse well. Adam answered that he had; but the plaintiff told him that he had better go and rub down the horse again, so that no man could say that the horse had been out. Adam went again into the stable, and while there the second time, saw a Mr. Stilwell, who inquired for the plaintiff, and went into the stable and looked at the horses.

Adam afterwards, by the direction of the plaintiff, went to bed and lay some time.

The plaintiff some time during that day, told Adam that he feared Adam had not done the business; otherwise he should have heard of the fire; to which Adam replied, that it had rained very hard, and he supposed nobody had come up. The next day, which was Sa-

turday, the plaintiff went down, as he had said he should do the day before, *to see how Bennet* had left the house. The day after, he returned, and told Adam that he must go and put a letter in the post-office at Trenton for Capt. Reed.

Afterwards, and as Adam thought after the return of the plaintiff from New-York, he asked Adam whether he had met any one on the road on his return from burning the buildings, to which Adam answered that he had met a fish waggon; the plaintiff asked him if he knew who was in it? he said he did not. The plaintiff told him that it was Peter Brewer. The plaintiff further said, that he feared the office would not pay any thing, because it was suspected he had burned the buildings, and charged Adam never to own that he had set them on fire. The plaintiff told him that should he ever own it, he would be put in the state-prison. Adam replied, there was no danger as to his owning it, and that he never should; and the master thereupon renewed his former promises.

It appeared that in June or July after the fire, Adam saw a waiter, who was an Irishman, who conversed with him on the subject of the fire, and asked him if he knew any thing about it, who answered, that he did not. The waiter said that the Philadelphians would give any one \$5000 who could give information who had burned the building; stating further, that they suspected the plaintiff. Adam replied that he would not do such a thing, as he was a nice man, *and a judge*.

Sometime last winter Adam drove the plaintiff from home to Amboy ferry, from whence he was to go to New-York, as he said, to get his money. On the way the plaintiff cautioned him never to tell that he had burned the buildings. Adam said that he would not, but that the Philadelphians had offered him \$5000 if he would tell. To this the plaintiff said, "Poh! They only want to get you in the state-prison" No other offer had ever been made to Adam, except the one as stated by the waiter.

The first person to whom Adam made the confession concerning his agency in the destruction of the property, was to Charles Haight, who had sent to Adam by one Jim a waiter in Mr. Davis's tavern at Trenton, to come to him there.

Adam went to the tavern, and Mr. Haight, after taking him in a room by himself, asked him if he knew him, to which Adam answered that he did. Haight then told him, that he (Haight) wanted to know what Adam knew about the burning of the building at Long Branch, telling Adam further that if he did not confess he would be taken to New-York; that Peter Brewer had sworn he met him on the night of the fire. Adam at first denied it, then hesitated, and walked the floor for some time. Haight said that they could not and should not hurt Adam, because he was a slave and bound to do what he was bid, and for that reason Adam was not so much to blame. Adam said that should he own it, or not, state-prison would be his portion. Haight then gave his word and honour, that if Adam told the truth, he should not be hurt: and Adam then made the confession. Haight then told Adam that he would see him again in eight or ten days. Witness had been very much troubled in his mind, had no rest, and was always afraid.

At the next interview with Haight, he inquired of Adam whether he was free, to which he answered that he was; that he had a paper. Haight asked him to get it; he did so, and gave it to Mr. Haight. Adam said that though by the paper given him by his master, and according to his directions, he was to go once a year as if to pay money to his master, yet he need not, in fact, do so, but that the plaintiff would pay him the money as he had promised.

Some days afterwards Haight called for him again, and wished him to go to New-York, which he did.

From the cross-examination of Adam, it further appeared, that when, on his return from burning the buildings he met and passed the waggon, he went as near the fence as he could to get under the shade of a

hickory-tree; and that the distance between the waggon and fence at this place was about the width of a waggon. He stated, that he could have distinguished a black from a white man across the road.

Haight applied to him to be examined in June last, and told him of the circumstance concerning his having been met by Peter Brewer, as before related, whose testimony would be strong against him. Adam thought he was made a free man, by means of the writing given him by his master.

Adam further stated, that he was examined last summer: told the truth then, and tells it now. He is sure Mrs. Quay went down to Middletown-Point. The plaintiff told him he was going to get the property insured, and wanted Adam to burn it, as the plaintiff would thereby get \$10,000 from the insurance office. Adam never had any promise from any person to receive any money or other thing. Charles Haight first applied to him to become a witness. The plaintiff told Adam, where Peter Brewer met him on his return from burning the buildings. When he went down to Bennet's with the letter, there was a sick boy at a house not far from Bennet's, where he stopped to inquire the road.

Adam thought he was free, because he had got a paper for his freedom.

The cross-examination of this witness was long, minute, and critical, and the Reporter believes that he has omitted nothing material either on the direct or cross-examination. He has detailed the testimony of this witness more fully than any other*.

On being called again, Charles Haight further stated, that he sent a black man with a message to Adam, and when he came Haight had a long conversation with him, wherein he confessed and gave a minute relation of all the circumstances attending the transaction, sub-

* This witness was examined very critically by the counsel on both sides in the month of July last, before his honour the Recorder of New-York. The examination occupied two days, and the testimony he then gave, was substantially the same with what he stated on the trial.

stantially the same he had told on this occasion. In the first interview, Haight inquired of him if he was free, which he answered in the affirmative, and during the second interview Adam showed him the instrument from his master, for his freedom, above set forth.

The plaintiff's counsel here produced testimony for the purpose of invalidating the testimony of Peter Brewer and Adam Wyckoff, and to show the value of the property insured, and the general good character of the plaintiff.

Samuel Holmes, jun. stated, that in the month of June, after the fire, he was in company with Peter Brewer and others, and that Brewer said there was an agent over from New-York, to inquire about the burning of the buildings, and that he met a man at Colt's Neck during the night of the fire; and believed it to be Wm. Haight's negro, and thought so at the time.

On his cross-examination, he was not certain that Brewer mentioned that an agent was over, but some one of the company did.

James West, on being sworn, stated that the next morning after the fire, as he believed, he saw Peter Brewer at the Branch, who told him that he met a man on horseback during the night of the fire, but did not know either the man or horse.

On his cross-examination, he stated that he was acquainted with Benjamin Wooley and Cornelius Brewer, and that their character was as good as the general run of men.

Joseph Vunk, on being sworn, stated, that he went to Philadelphia after the fire, and after his return, and between eight and twelve days from the time of the fire, having heard about the report made by Peter Brewer, the witness had a conversation with Brewer, who denied that he had ever said that he saw Adam

on the road, for it was so dark that he could not tell whether the man was black or white.

On the cross-examination of this witness it appeared, that he had been much in company with the plaintiff at public houses, drinking with him, and had served under him as a constable.

William R. Trotter, on being sworn, deposed, that on the third of July last he had a conversation with Adam, who informed the witness that he had been sworn and examined concerning the destruction of the buildings at the Branch; and that he had been swearing against his mater. Adam further said, that he had often been solicited to go over to New-York—he had done so, for which he was to have his freedom and \$800; but he did not say from whom he was to receive that amount.

On his cross-examination he stated, that he had known Adam for some time, that he had known him in New-Jersey. The conversation mentioned took place in the jail in New-York; witness was confined there for debt. He knows Mr. McDowell, saw him in jail on the 4th July. He heard that Adam and McDowell had a scuffle on that day in jail: witness did not tell McDowell then what Adam had said; told him and Mr. Shannon about six weeks ago, and told no one else. He lives in Cranberry in New-Jersey, and was subpoenaed by McDowell, who had been residing in New-Brunswick for some time, waiting for this trial.

Jonathan Morris, on being sworn, stated, that the next week after the fire he had a conversation with Peter Brewer on the sea-shore, concerning the person Brewer had met on the road. Brewer told him that he was asleep, and was awakened by a jolt at the time the man passed, which was about fifty yards from Tylee Williams' house. Who the man was, Brewer did not know: that the person rode on the north side of the road, on the other side of which the fence was so near the road, that a person could scarcely pass between

the waggon and fence. At this place the witness thought, but was not positive, that there was no tree standing.

James Wethers, on being sworn, testified, that in July or August last he lodged with Peter Brewer, and had a conversation with him. Brewer in that conversation told the witness that he had been paid well for coming up to New-York; that he had been paid \$2 a day, and boarded wherever he pleased, which was better than fishing. Brewer further said, that he expected to be paid 6 or 800 dollars by the insurance company, should they succeed on the trial.

Wethers gave a similar relation concerning a conversation with Brewer, wherein he spoke of a jolt which awakened him, as the last witness. Wethers is well acquainted with the road passing by the house of Tylee Williams, and does not remember any walnut trees between Williams' and Haight's.

David Craig, jr. of the city of New-York, on being sworn, stated, that during the last summer he had a conversation with Adam in this city, who told him that he had come up for the purpose of giving testimony against his master. The witness inquired of him what he had to say concerning the business. Adam said that he had set the buildings on fire. The witness inquired and pressed him to say whether he had put fire by the orders of his master, to which Adam answered in the negative.

The witness had lived in Monmouth, and remembers that Adam was tried there for an offence, and is pretty sure he was whipped.

From the cross-examination of this witness, it appeared, that in his conversation with Adam, he did not tell the witness who had ordered him to burn the buildings; he could not recollect that he had told any person of the conversation he had with Adam, except his uncle, Sheriff Craig, whom he told about a month ago. The witness keeps a boarding-house in

this city, where some of the plaintiff's witnesses on this trial board.

David Craig, Sheriff of Monmouth county, was then called and sworn as a witness on behalf of the defendants. This witness testified, that he did not remember any conversation with the last named witness concerning Adam, at the time he mentioned, and that had such conversation occurred, he, the witness, could not have forgotten it, as he believed. This evening David Craig had mentioned the conversation which, he says, he had with Adam: that during the month of August last, he, the witness, was in this city, and conversed with him, David Craig, jr. about the business of the plaintiff; but the witness had no remembrance of such a conversation as now mentioned: and thinks, that had it taken place, he should remember it.

This witness further testified, that he is acquainted with Joseph Vunk, one of the witnesses on behalf of the plaintiff, and that the general character of the said Vunk is not good. David Craig, jr. is subject to intoxication.

Charles Haight, on being again called on behalf of the defendants, further testified, that after the examination of Adam in the summer, as before mentioned, Tylee Williams and the witness had examined and ascertained that there was a tree near the place where Adam had met the waggon; but he thinks it is a black walnut instead of a hickory.

The counsel for the plaintiff here proceeded to introduce in evidence, a number of depositions taken under the commission, for the purpose of showing the value of the property insured, and the general good character of the plaintiff.

From the depositions of Joseph McKnight, Jacob Wyckoff, William Ten Eyck, Daniel Denyse, Lewis Gorden, Henry Tiebout, Robert Wooley, Thomas Little, and John Patterson, it appeared, that in their

opinion, the value of the property, at the time of its destruction, was between 10 and 15,000 dols.

From the several depositions of John Croes, jr. a minister of the Gospel, John Schenck, and another of the same name, Samuel Hubbard, Dennis Forman, Benjamin Dubois, David Gordon, Halstead Wainwright, William Andrews, and John Hall, and also from the greater part of the depositions of the witnesses relative to the value, the principal part of all which witnesses had been acquainted with the plaintiff from ten to thirty years, it appeared that his general character for honesty and integrity was good.

The testimony here closed on both sides, at about nine o'clock in the evening.

After a few minutes consultation, the counsel for the defendants proposed to submit the cause to the jury under the charge of the judge.

This course was objected to by the opposite counsel, who said that Mr. Colden would sum up the evidence on their part; and on being told by the counsel for the defendants that he might proceed, Mr. Colden rose to address the jury: but the judge expressing a wish, that if the cause was summed up on one side, it might be on the other also, Mr. Emmet said that he would sum up, if Mr. Colden did. But as the jury had then been eleven hours in their seats, with an interval of one hour only, the judge said that he would adjourn the court until the next morning, at nine, which was done accordingly.

The next day, the cause was ably and eloquently summed up by Mr. Emmet and Mr. Colden*.

* It may be regretted by some, that the substance, at least, of the speeches of these gentlemen is not incorporated in this Report. But the range of argument was extensive: the detail of testimony is ample, in some instances, very particular; the prominent points of the whole mass of testimony are brought, as it were, in a single view before us, in the charge. These considerations, it is hoped, will furnish an apology for the Reporter.

His Honour the Judge charged the jury, that this cause was one of vast importance, as well to the public at large, as to the individual whose character was involved in the issue.

The business of insurance against fire, was, comparatively speaking, new among us; and perhaps the experiment had not yet been fully made, whether the community could continue to derive the benefit resulting from this sort of insurance, by reason of the very great exposure of those engaged in it to frauds and impositions.

From the nature of the defence, the investigation involved consequences of vital importance to the plaintiff; nothing less than his character and standing among honourable men, whose confidence, as it would seem from the testimony, he had enjoyed for thirty years.

For these reasons, his Honour said, that he had expressed a wish that the testimony should be summed up by the counsel on each side, in order that every thing might be said in favour of the plaintiff, that the testimony would warrant; while, on the other hand, if from that testimony it should appear that he had procured the buildings to be burned, for the purpose of making a fraudulent claim of loss against the defendants, he ought to be held up to public view as a fit object for the finger of scorn to point at, during the remnant of his miserable pilgrimage through this life.

In actions of this nature, his Honour thought that it was not too rigorous, if juries should require plaintiffs to make out their case, free from just suspicion—Was the present such a case?

First, as to the facts, independent of the testimony of the black man:

The plaintiff, a short time before the fire, had purchased, at Sheriff's sale, the equity of redemption of the premises insured, with some other property, for the sum of one thousand and five dollars. He had insured upon the buildings \$10,000.

He had offered to sell the property, which he had purchased for the price he gave; and solicited Mr.

Charles Haight to take it off his hands at cost. He afterwards said that he had sold the property to his nephew, a Captain Read, who lives in Philadelphia, for \$9,000: that his nephew had purchased furniture, and was preparing to move when the fire happened. But as to all this, the plaintiff had offered no proof.

He was very anxious to get Bennet's family out of possession, and refused to let them remain in a part of the building, manifestly not his, although they were not in a situation to remove with comfort. He alleged as a reason for his anxiety on the subject, that his nephew was about to come on from Philadelphia to take possession of the house; but no letters are shown which are said to have passed between them on this subject, nor has that nephew been examined in the cause, or his absence accounted for. *We may, therefore, rationally infer, that the plaintiff in his endeavours to get Bennet out of possession, resorted to a pretence.*

He was earnest and particular in his inquiry respecting the time and circumstance of Bennet's removal; and when he was informed of it, expressed a great desire to send a letter to his nephew to acquaint him with the fact. A person, then on his way to Philadelphia, offered to take the letter, and waited for it an hour, but no letter was sent by the plaintiff.

In relation to the plaintiff's knowledge of the removal of Bennet—with regard to the amount of the insurance on the property, and the loss and ruin which the fire would occasion him, the plaintiff told repeated falsehoods, and never disclosed the truth respecting the insurance, until he had obtained from the judges of the county, the necessary certificates to enable him to claim a loss. These papers, afterwards, he either destroyed or suppressed.

Finally, he swore that he had sustained an absolute, unqualified loss of \$10,000 by the destruction of the buildings; although the whole property cost him but one thousand and five dollars. And there is the strongest reason to believe, that the property was worth no more than that sum, not only from his offer to sell it at

that price, but from the circumstance of its having been repeatedly offered for sale at auction; and no more having been bid.

In addition to all this, it appeared, that as late as the seventeenth of May, the very day before the fire, nothing had been done towards planting, or preparing the garden for cultivation. This measure would naturally have been taken, if the buildings were actually intended to have been occupied the ensuing summer by the plaintiff's nephew, in the manner the plaintiff pretended.

The fire too occurred immediately after the plaintiff knew that Bennet's family had removed. They went out on Tuesday evening: he was informed of it on Wednesday; and on Thursday night the buildings were burned.

His honour the judge here observed to the jury, that from these circumstances alone, connected, as they were, with others of minor importance, he thought that the jury might very fairly conclude that the plaintiff was not entitled to their verdict: though if the case stood upon the circumstantial evidence only, they might, perhaps, hesitate in coming to such a result.

Next, then, as to the positive testimony of the black man; for if the jury believed him, there could not exist a doubt of the plaintiff's guilt. Was Adam Wyckoff to be believed?

In deciding this question the jury were to take into consideration, as well the circumstances which were against, as those which operated in favour of his credit. He was an accomplice, and had been the plaintiff's slave; and might, therefore, have been governed by improper motives towards him. In both respects, therefore, his testimony ought to be received with caution. As an accomplice, he necessarily testified to his own turpitude; still the policy of the law, trusting in the judgment and sound discretion of a jury, had allowed such evidence for the purpose of detecting fraud and crime.

If the testimony of an accomplice is contradictory in itself, and unsupported by other evidence, it would be

too dangerous to rely on; but if the whole manner in which the witness testified, of which the jury is always capable of judging when he is examined before them, is calculated to command credence; if his story is consistent and corroborated by other evidence, it becomes justly entitled to serious attention. The jury had seen the black man, witnessed his manner, and heard his story, and were now to be the sole judges of its truth. The account which he had given of this transaction from the time he was first spoken to by his master on the subject, until his confession of his agency therein to Mr. Haight, as well as the account of that confession, is a plain, connected, consistent story. After being subjected to a very long, critical, and able cross-examination, this witness had discovered nothing either in his manner, or in what he had said, to detract in the least from his credit. Very few witnesses, under any circumstances, would better stand the test of such a scrutiny. There was, besides, in different parts of his testimony such a minute and natural detail of little particulars, that no person, however ingenious, could possibly have fabricated. Among these might be mentioned his reason for not putting his horse under Mrs. Crawford's shed; changing his position in the cedars; the description of his own feelings and alarm when going from the house to the stable; the candle being blown out by the wind; the fright of his horse at the light; the manner of lying down on the neck of the horse, and holding him with the old bridle: these, with many other particulars in his testimony, exhibit the manner in which such things would naturally have occurred.

He was corroborated too, in several very important particulars, by many witnesses whose credit was unimpeached.

1. As to the taking of a letter to Bennet, and seeing Dr. Lewis there, who, Mrs. Bennet says, wrote the answer.

2. The straw mats that were left in the garrets of the buildings, and the garret floor of the south wing.

3. The rapid rate at which he rode for some time on his return.

4. The lighted candle in the house near to the place of the fire.

5. His meeting a man in a waggon.

6. The time of the commencement of the rain on the night of the fire.

7. The testimony of Mr. Haight, to whom he first made a disclosure of the fact of his having burned the buildings. Mr. Haight says, that the first relation made by this witness of the particulars, was substantially the same as that which he has made on this trial.

In some important particulars too, the plaintiff might have contradicted this witness, had he spoken untruly; for as he was examined in the summer, the plaintiff was fully apprised of what he would say on the trial. He states, that on Thursday morning, the plaintiff told him he was going to Sheriff Gordon's to get his papers completed; and further stated, that when the plaintiff returned in the evening, he told the witness that he had got his papers, and that he, the witness, must go and burn the buildings that night. Now, if the plaintiff had not been at the Sheriff's that day, and especially if the Sheriff's deed had not been executed on that day, the plaintiff might easily have proved it by the Sheriff, or one of the subscribing witnesses; yet no attempt of the kind had been made, notwithstanding the counsel for the defendants had required that the Sheriff's deed should be proved by one of the subscribing witnesses.

The attempt to impeach the credit of the black man and Brewer, the man whom the negro met on the road, had wholly failed. The witnesses who had sworn that the black man had told them a story somewhat different, in some particulars, were not, in the opinion of the judge, entitled to much, if any credit; and he did not hesitate to tell the jury, that he did not believe the relation of D. Craig, the younger: for it was not only improbable in itself, but his manner was

very much against his credit. He had also been contradicted by his uncle, in one important particular.

It was not to be denied, that Peter Brewer had, on different occasions, said that he did not know the man whom he met on the night of the fire; but it was as certain, that on the morning after the fire, he did tell two persons that it was the plaintiff's black man: and on the Sunday following, he told his Brother-in-law and Sister the same thing. The latter then cautioned him to be careful how he said any thing, to implicate the plaintiff, lest he might prosecute him. Until this time, Brewer could have no motive to say any thing but the truth: and it is in evidence, that soon after the fire, in the neighbourhood where Brewer then was, that the plaintiff, upon being told, on an inquiry made by him, "What the people thought of the fire,"—that they thought it was by his procurement; observed that "they might think what they pleased, but that he would prosecute any one who said any thing to implicate him." Although, in strictness, it would have been better for Brewer to have adhered to the truth, or have evaded inquiries on this subject by silence in consequence of the threats made by the plaintiff, yet those threats afford a strong reason, and explain the contradictions of the witness.

His Honour the judge, in the conclusion of his charge, observed to the jury, that he thought they ought to receive and weigh the testimony of the black man with great caution and deliberation: but that if, after doing so, there remained no reasonable doubt of his truth, which his Honour felt himself bound, under the circumstances of this cause, to declare was the honest conviction of his own mind, it was the duty of the jury to believe the witness, and find a verdict for the defendants.

The jury having retired about ten minutes, returned a verdict in favour of the defendants.

04L11307
DB10

2010.155